

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review)	CC Docket No. 00-175
Separate Affiliate Requirements of)	
Section 64.1903 of the Commission's)	
Rules)	

**REPLY COMMENTS
OF
ALLTEL COMMUNICATIONS, INC.**

ALLTEL Communications, Inc.

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November 23, 2001

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ALLTEL Communications, Inc., on behalf of its local exchange carrier affiliates (hereinafter "ALLTEL" or the "ALLTEL Companies") respectfully submits its reply comments in the above-captioned proceeding.¹

I. Introduction and Summary.

ALLTEL joins the majority of the commenting parties in this proceeding who support elimination of the separate affiliate requirement. Those opposing elimination of the separate affiliate requirement based their arguments largely on speculative concerns conjecture, unsupported claims and inconsistent evidence.

As the Commission continues to pursue the deregulatory mandate of the Telecommunications Act of 1996 ("the 1996 Act"), it must, under the biennial review process, scrutinize regulation to determine if it is still required. The separate affiliate requirement imposed on independent incumbent local exchange carriers ("IILECs") was implemented to protect competition from conceptual harms that never materialized. The

¹ *In the Matter of 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, Notice of Proposed Rulemaking, CC Docket No. 00-175, FCC 01-261 (released September 14, 2001) (hereinafter "NPRM" or "Notice").

separate affiliate requirement saddles small and mid-size IILECs with costly and resource draining administrative requirements while providing virtually no demonstrable competitive protection to the interexchange market. Effective alternatives to this outmoded form of regulation exist which expose anti-competitive conduct and protect competition.

II. The Separate Affiliate Requirement Is Not An Act Of Enforcement.

As ITTA and OPASTCO discussed in their joint comments, regulation that is implemented to protect a group from perceived future anticompetitive harms is inappropriate.² ALLTEL agrees that the separate affiliate requirement is based on unproven concerns regarding possible misconduct that has not materialized as a threat to competition. More than five years has passed since the Commission decided in the *LEC Classification Order* to continue applying the separate affiliate requirement to IILECs. More than two years has passed since the Commission's most recent decision in this proceeding (*Second Reconsideration Order*) and, as Sprint notes in its comments, there have been virtually no substantiated complaints of IILEC cost shifting or pricing discrimination.³

WorldCom repeatedly points to the *LEC Classification Order* to illustrate that the ability and incentive for IILECs to discriminate against their rivals has not diminished. WorldCom then infers that the absence of complaints regarding anticompetitive IILEC conduct is the result of the separate affiliate requirement's deterrence.⁴ But WorldCom's reasoning is deficient. As ITTA notes in its comments, according to the Commission's Fifth Report and Order, there were no records of IILEC anticompetitive abuse prior to the

² Joint Comments of ITTA and OPASTCO at 11-13.

³ Comments of Sprint at 4 - 5.

adoption of the separate affiliate requirement either.⁵ Consequently, WorldCom's reasoning is flawed. As ALLTEL discussed in its comments, the theoretical harms the Commission sought to address when it initially implemented the separate affiliate requirement on IILECs are not now, nor have they ever been palpable threats to competition.

III. IILECs and Competition.

AT&T states that there has been virtually no competitive entry into the IILECs territories and, therefore, the separate affiliate requirement is still necessary.⁶ AT&T then alleges that both SBC's long distance affiliate in Texas and Verizon's long distance affiliate in Missouri are engaging in price squeezing in their respective states.⁷ If these allegations are true, then the IILEC separate affiliate requirement is ineffective in preventing the very behavior with which AT&T is concerned.

By citing concerns about long distance services offered by regional bell operating companies (RBOC), AT&T diverges from the purpose of this proceeding which is to seek comment on whether the separate affiliate requirement is necessary regulation for independent ILECS. If AT&T had evidence supporting similar anti-competitive behavior by independent ILECs, they would certainly have proffered these arguments.

IILECs are vastly different from the RBOCs, particularly in the context of an IILEC's ability to hinder competition in the long distance marketplace. As discussed in ALLTEL's comments and echoed by Sprint in their comments, IILECs serve

⁴ Comments of WorldCom 3-6.

⁵ Comments of ITTA at 14.

⁶ Comments of AT&T at 4.

⁷ Id. at 4-5.

predominantly rural areas and lack the economies of scale, scope and density that would be necessary to harm the much larger interexchange marketplace.

[U]like the BOCs, it is much more rare for an interstate call to originate and terminate in a specific IILEC's territory. Dispersion lessens the potential to affect competition, meaning that the IILECs have less opportunity to use local-long distance consolidation to harm competition.⁸

IILECs, by the nature of their service territories, are no threat to the interexchange marketplace. Protection from the RBOCs is a weightier concern that Congress addressed in section 272.

IV. Section 272 Was Written To Address A Specific Concern.

Section 272 safeguards were mandated on the RBOCs to safeguard competition as the RBOCs entered the long distance market. There is no mention in section 272 of requiring IILECs to adhere to these or any comparable separate affiliate requirements and there was no intention to impose such safeguards on any company other than the RBOCs. Sprint comments on this point at some length and expands on the argument that there is no justification for differential treatment among IILECs. Sprint stresses that the matter at hand is “whether the interexchange marketplace will be disadvantaged by IILEC entry into long distance without a separate affiliate,”⁹ and reiterates its dispersion argument. Simply stated, the activities of IILECs are similar, regardless of size, because of the predominantly rural areas they serve and the relatively small percentage of calls that originate and terminate on the same IILEC network.¹⁰ No arbitrary delineation need be made between IILECs. In the context of protecting the

⁸ Comments of Sprint at 3.

⁹ Id. at 6.

¹⁰ Id. at 8.

interexchange market, Congress created the delineation between the RBOCs and the ILECs in section 272 and this proceeding should recognize this fundamental distinction.

V. Existing Regulation Sufficiently Protects Long Distance Customers.

ITTA states in its comments, “[t]he font of the concerns for misallocation, discrimination and price squeeze... has been substantially dried up by the 1996 Act.”¹¹ ALLTEL concurs with this sentiment in its comments and agrees that there are ample existing regulatory tools to monitor ILEC behavior. Section 251, i.e., mandatory interconnection, unbundling and resale requirements, has dismantled “bottleneck” control of ILEC facilities. These market-opening mechanisms have existing and tested enforcement tools to deter anticompetitive conduct and will continue to protect competition in the future. ALLTEL echoed ITTA’s point in its comments that access charges and end-user rates will continue to be backed by the detection, correction and enforcement mechanisms of Title II.¹² These regulatory capabilities and powers exist independent of the separate affiliate requirement. The continued existence of the separate affiliate requirement ignores these existing mechanisms, provides no additional protection, and perpetuates unnecessary regulation.

Interexchange competition will continue to grow if the separate affiliate requirement is eliminated. Conversely, the impact of continued ILEC compliance with the separate affiliate requirement will continue to divert limited ILEC resources. ILECs, by having to comply with separate affiliate rules, must navigate unnecessary

¹¹ Comments of ITTA at 17.

¹² Id. at 13.

bureaucracy and absorb additional costs in a marketplace that can ill afford such obstacles. As a result, the separate affiliate requirement “postpones the arrival of true competition in the market place by handicapping one group of participants to the competitive benefit of other groups.”¹³

VI. Conclusion.

For the reasons stated in both its initial and reply comments filed in this proceeding, ALLTEL urges the Commission to eliminate the IILEC separate affiliate requirement. The continued existence of this requirement for IILECs is unnecessary and does not promote competition or protect the interexchange marketplace.

Respectfully submitted,

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¹³ Id. at 11.